



STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. Box 3378
HONOLULU, HAWAII 96801-3378

In reply, please refer to:
File: EHA/HEER Office

2009-814-ES

December 14, 2009

(b) (6)

Environmental Business Line Coordinator
Naval Facilities Engineering Command, Hawaii (EV)
400 Marshall Road
Pearl Harbor, Hawaii 96860-3139

Facility/Site: Marines MFH MCBH Pa Honua III
Subject: Management of pesticide-impacted soils at Marines MFH MCBH Pa Honua III

Dear Mr. (b) (6)

Thank you for your 11/19/2009 letter Ser OPHEV1/01837 regarding the management of pesticide-impacted (PI) soils at military family housing sites at MCBH Kaneohe Bay, particularly at the Pa Honua III neighborhood (TMK 144009003, 21.443°N, 157.741°W). Your letter was in response to our 9/30/2009 letter 2009-639-ES, in which we requested additional information regarding activities at Pa Honua III and other MCBH housing sites.

The 10/1/2007 Phase II ESA report for the site, which you had provided to us on 7/30/2009, adequately demonstrated that remediation was effective at Pa Honua III and that current conditions are protective of human health and the environment so long as the established pesticide-impacted soil management plan remains in place with appropriate tenant notifications and restrictions on soil exposures.

We appreciate the cooperation offered by the Navy and its housing contractors in working constructively with HDOH to address PI soil management issues at Navy and Marines privatized housing sites. We thank you for your offer of assistance in our investigation of complaints at MCBH housing sites.

As per your referral, we will be requesting (b) (6) to respond to the questions in our 9/30/2009 and previous letters. As we understand it, your referral to Mr. Boudra indicates that you are authorizing HMC to provide to HDOH documents in HMC's possession relating to the investigation and management of pesticide-impacted soils at HMC housing sites. If we are not able to secure the documents that we need from HMC to complete our inquiry, we will again turn to the Navy as property owner and potentially responsible party.

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We appreciate the interest you have expressed in HRS 128D, one of HDOH's sources of authority to require actions to respond to the public health threats posed by pesticide-impacted soils at the Navy's (and the Marine Corps') military family housing construction projects. Other sources of HDOH's authority in this matter include HRS 322 (nuisances), HRS 321 (general HDOH powers), and Article IX of the Hawai'i State Constitution (public health and welfare).

In closing, we again note that the Navy is obligated, under EO 12580 and CERCLA §120, to respond pursuant to CERCLA §104 to hazardous substance releases to the environment at Navy facilities, including cases where releases on Navy property may have resulted from legal pesticide application by the Navy or its contractors. (The often-cited FIFRA exception only affects CERCLA §103 and §107, and therefore does not exclude these cases from the Navy's obligation. Furthermore, we also note that under CERCLA §310, citizens may take civil action to compel the Navy to fulfill its obligations.)

Thank you for your attention. Should you have any questions regarding this letter, please contact me at (b) (6)

Sincerely,

(b) (6)

Site Discovery, Assessment, & Remediation Section
Office of Hazard Evaluation and Emergency Response

c:

(b) (6)

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